

# ALEXANDRINA COUNCIL

## NOTICE OF MEETING

Notice is hereby given to Councillors and Members that the next meeting of Development Assessment Panel will be held in the Community Chambers "Wal Yuntu Warrin", on 20 May 2009 commencing at 10:45 am



Your attendance is requested.

10:45 pm

Don Donaldson  
CHAIR

*13<sup>th</sup> May 2009*

**REPORT AND AGENDA  
FOR DEVELOPMENT ASSESSMENT PANEL MEETING TO BE HELD ON 20 MAY 2009  
IN THE  
COMMUNITY CHAMBERS "WAL YUNTU WARRIN",  
COMMENCING AT 10:45 AM**

**PRESENT**

**APOLOGIES**

**IN ATTENDANCE**

**ITEM 1      PROTOCOLS FOR ADOPTION**

REFER ATTACHMENT 1 (page 1)

**RECOMMENDATION**

That the Development Assessment Panel adopts the Alexandrina Council Development Assessment Panel Protocols.

**ITEM 2      ELECTION OF DEPUTY CHAIR**

**ITEM 3      CONFIRMATION OF MINUTES**

Minutes of the Alexandrina Council Development Assessment Panel held on 18<sup>th</sup> February 2009.

**RECOMMENDATION**

That the minutes of the Alexandrina Council Development Assessment Panel held on 18<sup>th</sup> February 2009 as circulated to members be received as a true and accurate record.

**ITEM 2.      DEVELOPMENT APPLICATIONS**

**NIL ITEMS**

ITEM 3. **DEVELOPMENT APPLICATIONS - NON COMPLYING**

3.1 455/D096/08 - Murndal Pty Ltd

**SUMMARY TABLE**

Date of Application	17 September 2008
Subject Land	Section 670 Burma Road, Kyeema
Assessment No.	A 14457
Relevant Authority	Alexandrina Council
Planning Zone	Watershed Protection
Nature of Development	Land Division creating one (1) additional allotment
Type of Development	Non-Complying
Public Notice	Category 3
Referrals	Planning SA, SA Water, Environment Protection Agency, Dept Water, Land & Biodiversity Conservation, Dept Health, native Vegetation Council Secretariat
Representations Received	Nil
Representations to be heard	N/A
Date last inspected	8 October 2008
Recommendation	Approval subject to conditions and concurrence of Development Assessment Commission
Originating Officer	Tom Gregory

**BACKGROUND**

This Non-Complying application was presented to the Development Assessment Panel (DAP) at its 19 November 2008 meeting, at the first stage of the Non-Complying process to determine whether the application displayed enough merit in order to warrant a full and proper detailed assessment against the Alexandrina Council Development Plan. Pursuant to Regulation 17(3) (b) of the Development Regulations 1993, and after minimal discussion the recommendation to proceed to the next stage of assessment was agreed and adopted by the DAP.

**REFER ATTACHMENT 3.1(a) (page 4)**

.../cont.

### 3.1 455/D096/08 – Murndal Pty Ltd (Continued)

The Applicant has since provided Council with a comprehensive Statement of Effect (**REFER ATTACHMENT 3.1(b)**), and the application was notified as a Category 3 application for the purposes of public notification. Further details pertaining to the outcome of this are discussed later in this report.

**REFER ATTACHMENT 3.1(b)** (page 8)

#### **THE PROPOSAL**

This application seeks to create one additional allotment within the Watershed Protection Zone as prescribed in the Alexandrina Council Development Plan. Land Division where additional allotments are proposed is listed as a 'non-complying' form of development within this Zone.

The Applicant currently holds 247.6 hectares of land with substantial frontage to Burma Road. The subject land is used for a number of rural uses, and contains two long-standing independent and functional detached dwellings sited approximately 750 metres apart. Each dwelling is independent from the other with respect to access, water supply, and the waste control / septic systems which are operational within each of the proposed allotments.

One dwelling (circa 1970) is situated in the centre of the property and is surrounded by a large number of outbuildings and farm buildings that are used in conjunction with the current operations on site. This portion of the allotment will continue to operate as a beef cattle farm, and will retain over 2 kilometres of frontage to Burma Road. Access to the dwelling on this allotment is gained via an internal track, which passes the second dwelling. The second dwelling (circa 1985) is located approximately 30 metres from Burma Road, and is currently fenced off in the configuration of this land division proposal. The proposal seeks to create a new title around the circa 1985 dwelling of approximately 2.7 hectares, and will retain 190 metres of frontage to Burma Road. This allotment has been referred to as the 'rural living' allotment for the remainder of this report.

**REFER ATTACHMENT 3.1(c)** (page 21)

#### **SITE & LOCALITY**

The majority of the subject land is significantly undulating with a pleasant rural vista, and contains vast areas of open space with some areas of planted vegetation, and a number of dams. The rural character of the locality is predominately comprised of cattle grazing and dairy farms with a small number of vineyards and olive groves on the margins of the locality. Rural living sized allotments are not evident in the immediate locality; however a number of examples are more noticeable towards the township of Yundi.

.../cont.

3.1 455/D096/08 – Murndal Pty Ltd (Continued)

The site of the proposed 2.7 hectare 'rural living' allotment is at a higher elevation to the remainder of the property, and is set upon a plateau that is visually screened from the road. This area is considerably flat compared to the remainder of the property.

The locality is comprised of large parcels of rural land in private ownership, each generally containing a single storey detached dwelling, with associated outbuildings. It is evident that these structures are generally clustered together on these larger land parcels. There is no regular allotment pattern evident in the locality in terms of land size, frontage to roads or layout/configuration. It is difficult to ascertain the average sized allotment within close proximity to the subject land; however a general glance at an aerial photograph indicates that the proposed 2.7 hectare allotment would be the smallest allotment within the locality.

**REFER ATTACHMENT 3.1(d) (page 23)**

**PUBLIC NOTIFICATION**

Section 38 of the Development Act 1993 and Schedule 9 of the Development Regulations 1993 prescribe public notice categories for different types of development. As this proposal is a non-complying form of development (and results in the division of land and the creation of an additional allotment) this application was deemed to be Category 3 for the purpose of Public Notification.

Category 3 Public Notification was conducted between 19 February and 4 March 2009. A Public Notice was placed in The Times Newspaper, and notification was sent to all adjoining land owners advising them of the application, and inviting a written representation either for or against the proposal.

No representations were received.

**REFERRALS**

The Development Assessment Commission formally referred this application to a number of State Government agencies for comment. The following is a list and summary of the responses received. The referral responses in their entirety are attached to this report.

**REFER ATTACHMENT 3.1(e) (page 25)**

SA Water had no comment to make.

Department of Health had no comment to make.

.../cont.

3.1 455/D096/08 – Murndal Pty Ltd (Continued)

Department of Water, Lands and Biodiversity Conservation had no comment to make.

Native Vegetation Council Secretariat indicated that:

*subject to there being no clearance of native vegetation for the construction of fences along the new boundary, the Native Vegetation Council considers that the proposal does not conflict with the planning principle concerning clearance of native vegetation. Any proposal to clear native vegetation, unless subject to an exemption under the Native Vegetation Regulations, requires the approval for the Native Vegetation Council.*

As the fences are currently in place, there is no intention to clear native vegetation. Should this application be approved, the second part of the above response will be made into an 'advisory note' to be placed on the final Decision Notification Form.

The Environment Protection Agency indicated that they had a significant concern in supporting the application as it could create a precedent for other similar development of a type that is not envisaged in the Development Plan, and is likely to have adverse effects on water quality and farming. Additional allotments in the Watershed are of a concern to the EPA on water quality grounds, as increasing the number of smaller allotments in the watershed will intensify the use of the land. Although no specific recommendation was made, it appears that the EPA were advising Council and the Development Assessment Commission (DAC) that Development Plan policies are sufficient to guide decision making with regard to environmental protection.

The DAC in their response noted the relevant provisions of the Development Plan relating to Land Division within the Mt Lofty Ranges Watershed, and moreover the Objective for the Watershed Protection Zone stating:

*Land should not be divided, nor allotment boundaries rearranged, in such a way that development of the resulting allotments in accordance with the objectives and principles of development control would result in a greater risk of pollution of surface or underground waters than would development of the existing allotments.*

The DAC also advised that they do not generally support non-complying land division applications without adequate and detailed justification, and that the creation of allotments for rural living purposes is contrary to the Objective for the Zone. Despite this, should the DAP resolve to approve the application, the DAC will take all supporting information into account when considering a request for concurrence.

.../cont.

### 3.1 455/D096/08 – Murndal Pty Ltd (Continued)

Should Council wish to approve this application, the DAC has one condition which they have instructed must be made a condition of approval. This condition can be seen on the DAC referral response in the Attachments.

REFER ATTACHMENT 3.1(f) (page 35)

#### CONSULTATION

Consultation internally was undertaken with Council's Infrastructure Planning and Design Department, in particular Council's Land Development Officer – Stewart Ratcliff on the topic of vehicular access. Mr Ratcliff has advised that the vehicular access to this site is adequate and satisfactory.

#### ALEXANDRINA COUNCIL DEVELOPMENT PLAN

The subject land is located within the Watershed Protection Zone of the Alexandrina Council Development Plan. As the land division application was lodged on the 9 September 2008, the Development Plan consolidated on the 20 March 2008 is the relevant edition. The following Objectives and Principles of Development Control are seen as especially relevant to this Application. Please refer to the **ATTACHMENT 6** for a transcript of the listed Objectives and Principles.

#### Council Wide

Objectives: 1, 2, 18, 27, 29, 32, 48, 54, 55, 56, 57, 58, 62, 63, 65, 66, 67, 68,

Principles of Development Control: 1, 2, 6, 7, 9, 10, 108, 168, 169, 171, 172, 173, 174, 175, 187, 195, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 214, 215, 216, 228, 229, 254, 255, 256, 257, 258, 259, 260, 262, 263, 264, 278, 299

#### Strathalbyn District

Objectives: 1, 5, 6, 9, 11, 12

Principles of Development Control: 1, 2, 4, 5, 7, 10, 26, 44, 45, 46, 47, 49, 56, 70, 73

#### Watershed Protection Zone

Objectives: 1, 2, 3

Principles of Development Control: 1, 2, 3, 5, 12

.../cont.

3.1 455/D096/08 – Murndal Pty Ltd (Continued)

COMMENTS

The intent of the Watershed Protection Zone seeks to ensure that the natural character of the zone is preserved and/or enhanced, and is set out to limit inappropriate development on land valuable for water catchment purposes. The zoning provisions acknowledge the existence of agricultural and horticultural land uses and allows for the expansion of, or a change of use to these activities on allotments within the Zone. The zoning also allows for one detached dwelling to be constructed per allotment. More than one dwelling on an allotment is a 'non-complying' form of development and is not encouraged, as it is thought that this would intensify the use of the land, and have possible adverse impacts on water quality. The creation of an additional allotment for each of the existing dwellings in this instance will not create an additional development opportunity for a subsequent dwelling, nor will it promote a further intensification of the current land uses, as the 'rural living' dwelling is currently utilised independently from the remainder of the farm.

Historically, Council has not been supportive of the creation of additional allotments within rural areas (outside of townships), especially within the Watershed of the Mount Lofty Ranges region. The 'rural living' allotment is already fenced off from the balance of the farm allotment, and it appears that the separation of the dwellings onto their own titles will not alter the existing activities on site. It is the fact that the dwellings are completely independent from one another, and the sheer distance that separates the two that provides some merit for this application.

The pattern of land within the Watershed Protection Zone generally reflects larger land holdings. The introduction of smaller (rural living sized) allotments within this zone and region has been limited due to conservation and water quality concerns. In the past and in addition to this, there have also been concerns relating to possible land use conflicts that can sometimes arise between those who utilise large land holdings for primary production purposes, and those who seek smaller (rural living sized) allotments as a lifestyle choice. In response to this and to the question of land suitability, the Applicant has suggested that by limiting the area of the 'rural living' allotment to 2.7 hectares (and incorporating the dwelling within the existing paddock), this will ensure that there will be virtually no adverse impact on the viability of the remaining 244.9 hectare allotment for the continued operation of the beef cattle farm. In addition, it is believed that the proposed division simply formalises the current separation of land and land uses, and therefore will not introduce any additional land-use compatibility concerns.

.../cont.



### 3.1 455/D096/08 – Murndal Pty Ltd (Continued)

In the Statement of Effect received from the applicant, one section summarises how the proposal is thought to satisfactorily address a number of Development Plan policies purely relating to Land Division. The following dot points have been taken from the Statement of Effect, and are believed to display the merits of the proposal despite its 'non-complying' status:

- The proposed uses of the allotments are consistent with the uses of land in the locality, which currently contains a mixture of uses including dairy farming/farming, horticulture and rural living;
- The current use of the land will not materially change as a result of the proposal;
- The size, shape, location, slope and nature of the land contained in the proposed allotments are suitable for their intended (existing and approved) purposes;
- The proposal allows dwellings to be sited on allotments used for farming/rural living purposes to remain and due to the separation of the 'rural living' dwelling to the proposed boundary there is minimal potential for land use conflict;
- The use and development of the allotments will not lead to an increase in erosion, cause pollution or exploitation of a public water supply;
- The proposal will not increase the affects of flooding and are currently developed with no undue affects of surface drainage of the proposed allotments;
- Will not lead to the sterilisation of mineral resources;
- Does not affect heritage items;
- Will not affect underground water supplies;
- Does not create additional roads;
- The proposal includes an existing access driveway that is safe and convenient along with appropriate frontage to enable the new allotment to also achieve safe and convenient access; and
- No native vegetation is affected by the proposal

It is also interesting to note the decision of the Environment, Resources and Development Court in *Boggiano v City of Victor Harbor & Anor* [2007] SAERDC 45 (23 August 2007). In this case a third party appealed against a Consent by the Council following concurrence by the Development Assessment Commission to undertake land division creating 2 additional allotments in the General Farming Zone. The development was also a form of non-complying development.

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3.1 455/D096/08 – Murndal Pty Ltd (Continued)

The site in this matter accommodated three lawful, habitable dwellings on the land and the proposal sought to create smaller allotments around two dwellings and a large balance allotment with the original homestead. The Court considered issues such as the loss of productive agricultural land, rural living sized allotments/use, allotment layout, interface and compatibility between the dwelling and use of the smaller allotment and rural uses opposite and any precedent effect, and found that the Councils original Approval of the development was warranted in the light of the Development Plan and all relevant circumstances.

In reaching its decision the Court stated:

*38 Whilst I can appreciate the position of the appellant...I assess that there will be minimal impact or town planning consequences of approval to the division, which enables the majority of the subject land to continue to be used for grazing, meeting objective 1 of the GFZ, and which merely creates a different tenure for two other dwellings existing on the land.*

This judgement has relevance to the proposed land division as the dwellings and agricultural uses already exist, and the land division proposed simply places 'lines on a map' that lead to separate tenure and 'regularises' these uses.

Given the unique circumstances of the subject land, it is thought that the proposal does not diminish the extent of land available for primary production/agricultural purposes, and therefore represents an appropriate form of development in the context of the intent of the Watershed Protection Zone. Irrespective of the allotment boundaries, the existing uses of the land will remain and therefore is not considered to have any additional impact on the environment. There is no further potential for additional dwellings to be constructed on either parcel (should the application be approved), and all existing buildings will remain independent with adequate services in place. Proposed allotment boundaries follow existing fence lines, and therefore there is no intention to remove or interfere with native vegetation.

In addition, this proposal is not considered to be seriously at variance with the overall intent of the Alexandrina Council Development Plan, nor more specifically the intent of the Objectives and Principles of Development Control of the Water Protection Zone, and furthermore the rural character of the locality.

Given all of the above, and despite the non-complying nature of the proposal, it is the assessing Officer's opinion that this application poses enough merit in order to warrant Development Plan Consent, and has made the following recommendation accordingly.

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3.1 455/D096/08 – Murndal Pty Ltd (Continued)

**RECOMMENDATION**

That the Development Assessment Panel approve Development Application 455/D096/08 for the creation of one additional allotment at Section 670 Burma Road, Kyeema subject to the following notes and conditions, and subject to concurrence from the Development Assessment Commission.

Conditions:

- That plans shall be in accordance with the requirements for plans under the Real Property Act (Land Division) Regulations 1982.

Notes:

- Any proposal to clear native vegetation, unless subject to an exemption under the Native Vegetation Regulations, requires the approval of the Native Vegetation Council.

ITEM 4. **DEVELOPMENT APPLICATIONS - CATEGORY 3**

NIL ITEMS

ITEM 5. **DEVELOPMENT APPLICATIONS - LAND DIVISION / COMMUNITY TITLE**

NIL ITEMS

ITEM 6. **MATTERS REFERED FOR FOLLOW-UP**

NIL ITEMS

ITEM 7. GENERAL ITEMS FOR DISCUSSIONS

7.1 455/585/08 - Tavern & Freestanding Group Of Shops (Six Tenancies) With Associated Carparking And Landscaping At Lot 500, Alexandrina Drive, Clayton

File Ref: 3.14.001  
Officer: Andrew Sladden

REPORT

Development Application 455/585/08 was refused by the Development Assessment Panel at its meeting in December 2008. The Applicant (Norich Development Services P/L) subsequently appealed the Decision to the ERD Court. As a compromise could not be reached, the matter went to trial on 8 and 9 April 2009. Council engaged the services of Phil Broderick (Lawyer) and Mark Baade (Planner) to appear on Council's behalf.

The issues central to the hearing were whether the proposal was considered to be orderly and economic, compliance with the relevant provisions of the Development Plan and Clayton Structure Plan, appearance amenity and landscape design.

REFER ATTACHMENT 7.1 (page 44)

The Court (Commissioner) upheld Council's decision to refuse the application and dismissed the appeal.

RECOMMENDATION

That the report be received.

ITEM 8. NEXT MEETING